

### REMARKS

Reconsideration and withdrawal of the rejection of all the claims now in the application (i.e. Claims 1-18, 79 and 82-97) is respectfully requested in view of the foregoing amendments and the following remarks.

Initially, the Examiner objected to claims 89 and 92 for some language informalities. Each claim has been amended to overcome the objections raised by the Examiner.

The Examiner went on to reject claim 1 as being anticipated by *Wendt et al.* European Publication No. EP 0 098 518. Applicant has obtained a translation of that European publication which makes it clear that the metal oxide and ceramic are applied to a metal net. The metal net is shown in European Publication No. EP 0 046 252 (attached) and is discussed in the application. Applicant has amended claim 1 to more clearly recite that his metal network is an open cell foam structure which distinguishes over the structure of *Wendt et al.* which appears to be a two dimensional structure comprising a metal net covered with a pre-mixture of metal oxides and metal particles needed for the ceramic. This results in a two dimensional net-like structure rather than the now claimed metal foam network having an open cell structure which results in a three dimensional structure. Consequently, applicant does not believe that claim 1 as amended is anticipated by *Wendt et al.* *Wendt et al.*'s net cannot fairly be characterized as a foam.

The Examiner then rejected claims 1-7, 11-13, 16-18 and 79 as being anticipated by *Rowe Jr. et al.* U.S. Patent No. 4,542,539 which teaches a sintered bead porous coating. Apparently, the Examiner considered that the inner layer of beads formed a web and the outer layer of beads was the claimed metal particles bonded to the metal webs. As discussed above, claim 1 has been amended to define the porous metal network as a foam network having an open cell structure. *Rowe Jr. et al.* merely shows sintered beads which cannot be interpreted as an open cell foam network with the cells formed by webs covered with metal particles as now claimed.

The Examiner went on to reject claims 80-82, 86, 87, 91, 92, 93, 96 and 97 as being anticipated by *Rowe Jr. et al.* Applicant has amended claim 82 in the manner similar to claim 1 such that the porous metal network is an open cell foam structure which, as stated above, applicant believes differentiates from the multi-layer beaded surface of *Rowe Jr. et al.*

The Examiner considered that claims 8, 14, 88 and 94 were obvious over *Rowe Jr. et al.* since they related to pore size and pore volume which the Examiner believed

could be determined by one of routine skill in the art. Likewise, the Examiner considered claims 10, 15, 90 and 95 also would be ranges that could be developed by one of ordinary skill.

Applicant considers that the amendments to independent claims 1 and 82 differentiate over the prior art cited and consequently, the rejections under 35 U.S.C. of the various dependent claims are now moot.

None of the prior art cited by the Examiner shows a porous metal foam structure wherein the foam network has an open cell structure and the opening in each cell is surrounded by metal webs with the metal webs covered by at least a first layer of metal particles which are bonded to the metal webs to produce the final cell opening size. None of the prior art taken alone or in combination suggests that an open cell porous foam metal structure having webs covered with at least one layer of metal particles can be used on a tissue contacting surface of a medical device.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By 

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